IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE V. DHANAPALAN

WRIT APPEAL Nos.2807 to 2810 of 2002

and WAMP.Nos.5035, 5037, 5039 and 5041 of 2002

Fathimabi .. Appellant in WA.2807/02

K.R. Rahamathullah .. Appellant in WA.2808/02

K.R. Athavullah Basha .. Appellant in WA.2809/02

K.R. Ismail .. Appellant in WA.2810/02

vs.

1. The State of Tamil Nadu
   rep. by its Commissioner and
   Secretary, Housing and Urban
   Development Department,
   Fort St. George
   Madras 600 009.

2. The Special Tahsildar
   (Land Acquisition), Unit IV
   Tamil Nadu Housing Board (1st Floor)
   Nandanam
   Madras 600 035. .. Respondents in all WAs.

Writ Appeals filed under Clause 15 of the Letters of Patent against the common order of the learned Judge Mr. Justice N.V.Balasubramanian, dated 14.08.2001 made in WP.Nos.9319, 9320, 9318 & 9321 of 1993 respectively on file of this Honourable Court under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondents relating to the notification under section 4(1) of the Act in G.O.Ms.474 Housing and Urban Development Department dated 3.5.90 and published in Tamil Nadu Gazette Part II Section 2 supplement dt. 13.6.90 and declaration under Section 6 of the Act in G.O.Ms.No.1007, Housing and Urban Development Department dt. 21.6.91 and published in the Tamil Nadu Government Gazette Extraordinary Part II in Section – 2 dated 25.6.91 and also the award No.3/93 dt. 28.6.93 and quash the same with respect to petitioner's lands 1) SF.404/1A to with an extent of 0.88 cents and S.F.No.405/1A with extent of 0.34 cents (WP.9318/ 93) Land in S.F.No.404/2 (wef) 0.91 cents (WP.9319/93) 1.S.F.No.403/3 with an extent of 0.77 cents (ii)

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S.F.No.400/1B with an extent of 0.25 cents and (iii) S.F.NO.400/2B with an exent of 0.95 cents in (WP.9320/93) S.F.No.404/1B (Wef) 0.88 cents in (WP.9321/93) in No.189, Sholinganallur Village Saidapet Taluk, Chengai Anna district.
[Prayer amended as per order on Court in WMP.30610, 30614, 30616, 30612/93].

For appellants : Mr. K.M. Santhanagopalan

For respondents : Mr. C. Thirumaran
Government Advocate

COMMON JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the common order dated 14.08.2001 made in W.P.Nos.9318 to 9321 of 1993, the appellants / land owners have filed the above appeals.

2. Heard Mr. K.M. Santhanagopalan, learned counsel for the appellants and Mr. C. Thirumaran, learned Government Advocate for the respondents.

3. In the light of the order to be passed hereunder, we are of the view that there is no need to traverse all the factual details; however, the fact remains that the learned single Judge, by the impugned common order, quashed the declaration under Section 6 of the Land Acquisition Act, 1894 (in short " the Act ") and all further proceedings subsequent to Section 4(1) notification leaving the notification under Section 4(1) of the Act in tact with the liberty granted to the respondents to proceed further in accordance with law.

4. The learned counsel for the appellants, by drawing our attention to the fact that inasmuch as Section 4(1) notification was published in the Tamil Nadu Government gazette dated 13.06.1990; in newspapers on 16.06.1990 and in the locality on 02.07.1990, in the light of the proviso to Section 6 and Explanation (1) appended to that Section, as interpreted by the Supreme Court in the case of PADMASUNDARA RAO vs. STATE OF TAMIL NADU (AIR 2002 SC 1334), the respondents are not permitted to proceed further based on the notification issued under Section 4(1) of the Act in the year 1990.

5. There is no dispute regarding the date of publication of Section 4(1) notification in the gazette, newspapers and in the locality. Likewise, all the writ petitions were filed by the petitioners/appellants on 03.05.1993 and the learned Judge quashed all proceedings subsequent to Section 4(1) notification, on 14.08.2001. As per the proviso and Explanation (1) appended to Section 6 of the Act, which came into force on 24.09.1984, the respondents are not entitled to proceed further with the existing 4(1) notification, which was of the year 1990. This is also clear from the above cited decision of the Supreme Court. It is clear from the said decision that the limitation starts from the date on which the original notification came to be made.

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In our case, by the common order, the learned Judge, quashed the entire proceedings subsequent to Section 4(1) notification. In view of the fact that the writ petitions were filed on 03.05.1993 and even if we apply Explanation (1) appended to Section 6 of the Act, we are of the view that the respondents are not empowered to proceed further with the existing 4(1) notification. In this regard, it is worthwhile to refer to the conclusion of their Lordships in para 15, which reads as under.

> "15. .... If the Legislature intended to give a new lease of life in those cases where the declaration under S.6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim 'actus curia neminem gravibit' highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case. "

6. It is clear that only the period to be excluded is the period of pendency of writ petition and writ appeal. Even if we exclude both the said period, in view of the fact that 4(1) notification in these cases came to be made in 1990 and the writ petitions were filed only in 1993, we accept the contention raised by the learned counsel for the appellants and the respondents are not entitled to proceed further based on the 4(1) notification issued in the year 1990. Accordingly, though the learned Judge quashed all further proceedings subsequent to 4 (1) notification, in view of the above discussion, we make it clear that the respondents are not permitted to proceed further with the existing 4 (1) notification, as observed by the learned Judge. To this extent, we allow the writ appeals. No costs. It is made clear that if the respondents so desire, they are free to proceed afresh by issuing fresh 4(1) notification, in accordance with law.

In view of disposal of the main appeals, connected WPMPs., are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Commissioner and Secretary,
   Housing and Urban Development Department,
   Government of Tamil Nadu,
   Fort St. George,
   Madras 600 009.

2. The Special Tahsildar
   (Land Acquisition), Unit IV
   Tamil Nadu Housing Board (1st Floor)
   Nandanam
   Madras 600 035.

+ 4 CCs to Mr.K.M.Santhanagopalan, Advocate SR NO 30171

+ 1 CC to the Government Pleader SR NO 30213

Writ Appeal Nos.2807 to 2810/02
Dt.13.07.2006

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